

**TOWN OF ARLINGTON**  
**ZONING BOARD OF APPEALS**

**DRAFT**

**Date:** June 23, 2020

**Time:** 7:30 PM

**Location:** Remote Hearing, Zoom ID # 956 9484 3246

**Members in Attendance:** Christian Klein R.A., Chair, Patrick M. Hanlon, Kevin Mills, Roger DuPont, Aaron Ford, Steve Revilak.

**Minutes:**

**Attendance:** Peter Buckley, Rick Vallarelli, Pavas Gupta, Kanchan Gupta, Steve Hackbarth, Kathy Murtagh, Alex Yerukhimov, Robert Annese, Sharon Gafnee, Robert Bowes, James McIntyre, Colin Beatty, Don Seltzer, Chris Loreti.

**1) Chair's Introduction:** Chairman Klein opened the meeting at 7:36 PM. After reading the rules for remote hearings and a roll call attendance, the hearing was underway. It was noted that this hearing would be recorded.

**2) Docket #3622 46-48 Park Avenue Extension.**

The Petitioner Katchan Gupta was seeking a Special Permit for a second driveway to be installed at her property located at 46-48 Park Avenue Extension. Pavas Gupta spoke on behalf of his wife. Mr. Gupta explained to the Board that currently they share a driveway with the abutting property at 50 Park Avenue Extension. This situation was not only inconvenient, it was dangerous pulling out onto a occasionally busy street. The second driveway would be allowed by Special Permit under Section 6.1.10 (A) of the Zoning Bylaw. After viewing the proposed plan, Mr. DuPont noted that the Planning Department recommended a more detailed drawing. Mr. Mills agreed and reported that after visiting the site, he anticipated some problems with the proposed due to the elevations. Mr. Ford had concerns regarding the construction of the existing retaining wall with respect to the footings and overall structural integrity. Two neighbors spoke in favor of the project however the request for additional drawings and information made the Board uncomfortable to render a favorable decision. The case was continued to a date TBD.

**CONTINUED**

**3) Docket #3623 37 Fairmont Street**

The applicant Kathleen Murtagh wished to construct an addition to the rear of her property located at 37 Fairmont Street. Because the property lacks the "Usable Open Space" to support the additional gross floor area, a Special Permit would be required under Section 8.1.3 (B) of the Zoning Bylaw. Elevations and floor plans were presented to the Board. Mr. Klein had a question regarding the obstruction of the left side garage door. Ms. Murtagh explained that the plans would be altered slightly so that situation would improve. This request seemed straight forward and Mr. Klein asked the Board if they had any questions. There were none. Mr. Klein reviewed the criteria and reported that the request was in line with the criteria and asked for a motion. Mr. DuPont made a motion to approve, Mr. Mills seconded that motion.

**SO VOTED 5-0**

**4) Docket # 3627 73 Freeman Street**

The Petitioner Alex Yerukhimov was seeking a Special Permit under Section 8.1.3 (B) of the Zoning Bylaw. Mr. Yerukhimov wished to add a bathroom addition in the attic area of his home located at 73 Freeman Street. Mr. Revilak noted that according to dimensional and density calculations, the proposed addition would violate a half story and could not be permitted. Mr. Vallarelli reported that a good amount of area was barley 7'0" in the attic space by virtue of a pre-existing condition. With the proposed additional GFA and the existing conditions combined, the area in the attic that exceeded 7'0" would be far less than 50% of the floor below. Mr. Klein asked if there were any questions from the Board. Mr. Revilak had some questions with respect to the window glazing. Mr. Hanlon cautioned about imposing any restrictions regarding the glazing. After Mr. Klein reviewed the criteria, Mr. DuPont made a motion to approve. Mr. Hanlon seconded that motion.

**SO VOTED 5-0**

**5) Docket #3626 66-68 Palmer Street**

The Petitioner 66-68 Palmer Street LLC was represented by their Attorney Mr. Robert Annese. Mr. Annese first corrected some inaccuracies in both his application and in the memo from the Planning Department. The Petitioner was not seeking a Special Permit for a large addition as the proposed work was all within the existing footprint. In addition, the proposed additional GFA for the attic space combined with the existing attic space would still not be more than half of the area of the floor below. Sharon Gafnee, project Architect, explained how the attic area space was calculated and the additional proposed GFA for the attic space was 330 Sq. Ft. Mr. Klein had a question regarding the building height. Mr. DuPont had question regarding the difference in floor area between the first and second floor. Mr. Vallarelli explained how the half story definition is determined. Mr. Klein had two concerns regarding the roof pitch and protection around the egress well in the driveway area. Mr. Ford thought that the framing for the proposed dormer should be engineered, the Architect agreed. Mr. Revilak had a question regarding the GFA in the basement for the existing conditions. Mr. Vallarelli told Mr. Revilak that either himself or ISD

tries to check all calculations if time permits but cannot in all situations. Mr. Klein asked if the public had any questions. There were none. Mr. DuPont made a motion to approve with conditions. Mr. Hanlon seconded that motion.

**SO VOTED 5-0**

**6) Docket #3621 339 Massachusetts Avenue**

The Petitioner 339 Massachusetts Avenue LLC is appealing the Building Inspector's decision that their garage would be required to maintain a minimum 10 foot side and rear setback. The Petitioner was represented by their Attorney Mr. Robert Annese. Mr. Annese explained to the Board that his client was issued a building permit to construct a garage. Shortly after work began, the Building Inspector (ISD) posted a "Stop Work Order" at the site after it received a complaint stating that the garage was "too close" to the property line. Prior to the recodification of the Zoning Bylaw, a private garage was allowed to be constructed in any "R" district with a "0" setback provided that the construction type was 1 or 2 with a 3B roof. The new Bylaw now restricted this option to only RO, R1, and R2 districts. ISD was unaware of this change and issued the permit. The property at 339 Massachusetts Avenue is in an R6 zoning district.

Mr. Annese cited comparable court cases that gave the ZBA the right to overturn ISD stop work orders and the like. Mr. Annese requested "equitable jurisdiction" in a hope that the Board would take action in a reasonable and fair manner that would result in a just outcome.

Mr. Hanlon had a question with respect to the chronological order of events that lead up to this situation. Mr. Hanlon added that it was an error then and it is an error now. Mr. Ford questioned the proposed assembly to be in fact Type 1. Mr. DuPont thought that "equitable jurisdiction" may require a variance. Mr. Annese reported that the Board, by right, could exercise "equitable jurisdiction". Mr. DuPont question if the Board had the right to rescind the stop work order. Mr. Annese made it clear that his client hoped the Board would render a fair decision as he did not want to seek a variance.

Mr. Klein thought that this garage did not meet the definition of a "private garage". Mr. Revilack thought that the definition of a private vs. a public garage was ambiguous and could be taken either way. Mr. DuPont asked about concessions regarding other options.

Mr. Klein asked if there were any comments from abutters. There were a few. Margaret Abrams of nearby Allen Street, had concerns regarding parking and the appearance of the proposed garage. Other neighbors thought that the legal notice should contain more information such as plans and elevations. Neighbors reported that sometimes the property was overloaded with containers and cars.

Robert Bowes is a direct abutter and reported to the Board that he had no issues with the garage. Mr. Bowes was in favor of the project.

Don Seltzer thought the garage was too big and was concerned about the number of people that worked at 339 Massachusetts Avenue. At the conclusion of the hearing, the Board said it would not consider "equitable jurisdiction" as a solution. Mr. Annese asked the Board for a continuance, the continuance was granted.

**CASE CONTINUED**

**7) Docket # 3624 400-402 Massachusetts Avenue**

The Petitioner 400-402 Massachusetts Avenue was before the Board seeking a request to amend a Special Permit granted to this location on April 9, 1980. (Docket #2306)

Attorney Robert Annese represented the Petitioner. Mr. Annese explained to the Board that his client would like to have four residential units and one office unit at this property. The Redevelopment Board would ultimately make this decision however the Zoning Board of Appeals had to amend the original Special Permit for this to move forward. The Department of Planning and Community Development was in favor of this request.

Abutters were concerned about parking and the increased use of the property.

Mr. Klein reminded the Board that they were only voting to allow the two decision points to go forward to the ARB. In addition, Mr. Klein added that the ZBA was being asked to amend the Special Permit from 1980 to allow the ARB to move forward to evaluate this request for mixed use.

Mr. DuPont made a motion to rescind the Special Permit granted on April 9, 1980. Mr. Revilak seconded that motion.

**SO VOTED 5-0**

**8) Members Vote**

Approval of Meeting Minutes from ZBA remote hearing on May 26, 2020.

**MINUTES APPROVED, SO VOTED 5-0**

**9) Members Vote**

Approval of Decision for Docket #3619, 40 Park Avenue. Mr. Hanlon will make minor changes. This Decision was approved pending Mr. Hanlon's changes.

**DECISION APPROVED 5-0**

**10) Reports:** Updates on work underway by Town Working Groups with ZBA membership.

Mr. Hanlon and Mr. Klein reported on various projects that Town Working Groups were working on. Mr. Klein and Mr. Hanlon are members of such groups.

**MEETING ADJOURNED: 11:37 PM**